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Supreme Court of the United States

CARROLL DUNSCOMBE, PETITIONER,

VS.

A. O. KANNER AS JUDGE OF THE CIRCUIT COURT FOR MARTIN COUNTY, STATE OF FLORIDA, RESPONDENT.

PETITION FOR CERTIORARI AND BRIEF.

T. T. OUGHTERSON,
Attorney for Petitioner.

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PETITION FOR CERTIORARI AND BRIEF.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court for the United States:

Your petitioner, Carroll Dunscombe, a citizen of Florida, prays for the issuance of a writ of certiorari to the Supreme Court of the State of Florida to review a final judgment of the said Supreme Court, affirming a decree of the Circuit Court for Martin County, entered on November 17th, 1947, and its order denying a petition for rehearing entered on November 24th, 1947.

STATEMENT OF MATTER INVOLVED.

An important question appears as to whether the large number of federal chartered corporations, acting in a proprietary capacity, are immune from the laws of the states in which they enter and do business and also immune from state excise taxes levied against foreign corporations as a

class and if the charter of such a corporation restricts it to operate within a defined territory, if it can lawfully do business beyond the limits of such restricted territory and sue to enforce its contracts so made or if it had any power to bring a suit in any court to recover money.

BASIS OF JURISDICTION.

Pursuant to Rule 38 the petitioner files his statement of the basis on which he claims the Supreme Court of the United States has jurisdiction to review the final judgment of the Florida Supreme Court upon certiorari.

That Title 28, Section 344-b, gives this court jurisdiction to review any final decision where immunity under a federal law is granted or denied by a state court of final jurisdiction.

B.

That the statute of Florida, the validity of which is involved is Section 613, Florida Statutes, 1941, requiring foreign corporations that want to do business in the state to first register and pay the excise tax, appoint an agent upon whom process can be served, and defines as a foreign corporation, as any that are not chartered by the State of Florida.

C.

The statute of the State of Florida, the validity of which is involved in Section 58.01, Florida Statutes, 1941, and which statute requires a non resident plaintiff to post a cost bond within thirty days after demand therefor and for non compliance thereof, the action shall be dismissed.

D.

The federal statute involved is Title 12, Section 1148, Federal Code, under which Regional Agricultural Credit

Corporation of Washington, D. C., with main place of business in Kansas City, Missouri, was chartered and it is necessary to construe said act in order to determine:

1. If said corporation was authorized to bring a suit to recover money in any court;

2. If said federal corporation was authorized to do business in Florida;

3. If said federal corporation was ever granted any immunity from state taxation, if it did business in a foreign state;

4. If said federal corporation was ever granted immunity from the laws of the state in which it might do business or bring actions therein to enforce its claims.

Regional instituted a suit in the state circuit court against the petitioner, on a conditional note. Petitioner obtained proof from the Florida Secretary of State that Regional had not complied with Sec. 610.03 and moved to dismiss for non compliance. Petitioner also moved Regional be required to post the statutory cost bond required of non resident plaintiffs under Sec. 58.01, gave the plaintiff notice of such demand and after thirty days, moved the court to dismiss the suit on both grounds and also filed his demurrer on the grounds the charter of the plaintiff did not authorize it to bring a suit for money and that it had no authority to do business in Florida.

The trial judge denied the motions and overruled the demurrer and thereupon the petitioner sought a writ of prohibition to prevent the trial judge from proceeding further or requiring him to answer or plead. Under the state law and the state Supreme Court's construction of it, a trial judge has no discretion but must dismiss such actions where the non compliance has been called to its attention.

No reasons were given for denying the motions to dismiss by the trial court, nor were any reasons or grounds stated for denying the petition for the writ of prohibition in the State Supreme Court, a petition for rehearing was filed to make such grounds appear and was denied, but apparently the trial judge and the Florida Supreme Court accepted the contention of Regional, that because it was chartered by Congress it was immune from state taxes and immune from the laws of the state in which it did business, under the claim that being chartered by Congress it was not a foreign corporation, regardless of the Florida law that designates any corporation not chartered under the laws of Florida, a foreign corporation, and regardless of the fact it is a proprietary corporation organized for profit, wholly owned by RFC that is also federal corporation, organized for profit and neither Congress nor the State of Florida has granted such federal corporations any immunity from state taxation or any immunity to comply with the laws of the state in which they do business or bring suits to enforce their said claims.

That the decision so rendered was made by the highest court of the state in which said decision could have been made and is a final decision.

Cases that petitioner believes support the jurisdiction of this court are as follows:

U. S. Shipping Board v. *Sullivan,* 261 U. S 146.
Federal Land Bank v. *Priddy,* 295 U. S. 229.
Egyptian Arabic v. *Micheau,* 239 U. S. 737.
RFC v. *Barnett,* 98 F. 2d 190.
U. S. v. *Brown,* 41 Fed. Supp. 838 (Fla.).
Alabama v. *King,* 314 U. S. 1, 140 A. L. R. 615.
Flint v. *Stone Tracy,* 220 U. S. 107.

ASSIGNMENT OF ERRORS
Or
QUESTIONS INVOLVED.

FIRST QUESTION.

Did the trial and appellate court err in holding that Regional was not a foreign corporation and required to file a cost bond as a condition it maintain a suit in the Florida court?

SECOND QUESTION.

Did the trial and appellate court err in holding that Regional was not a foreign corporation and required to register, pay the state excise tax and appoint an agent upon whom service of process could be made, if it wanted to do business in Florida and use its courts to enforce its claims?

THIRD QUESTION.

Did the trial and appellate court err in finding that Regional was immune from state taxation or the laws of the state, with no proof to support such claim or anything in its charter that granted such claimed immunity?

FOURTH QUESTION.

Did the trial and appellate court err in holding that Regional was authorized to do business in Florida and bring suit to recover money and be allowed to bring suits in the Florida courts to enforce its unlawful claims?

REASONS FOR GRANTING THE WRIT.

1. That the State Supreme Court decided a substantial federal question, not heretofore determined by the United States Supreme Court.

2. That the State Court decided a substantial federal question in a way not in accord with the applicable decisions of the United States Supreme Court.

3. That the State Court could not have affirmed the decision on local grounds because all the state decisions were in favor of the petitioner.

4. That the State Court erroneously construed Title 12, Sec. 1148, because:

a. Neither that act nor any other act granted the plaintiff any immunity from taxation or the laws of the state, in which it might do business.

b. Neither that act nor any other act granted the plaintiff any immunity from complying with the laws of the state in which it sought to bring a suit in the state court.

c. That plaintiff corporation was not organized or chartered under the laws of Florida and therefore in the eyes of the Florida courts was a foreign corporation.

5. That it is important that all states know, if the great number of federal corporations, chartered by Congress and acting in a proprietary capacity and which have been granted no immunity from State taxation or compliance with the laws of the state in which they seek to do business, have to pay such reasonable taxes or comply with reasonable conditions as do the same private corporations, with which they are in competition.

23 Amer. Jur. 22, Sec. 10, note 19:

"The United States Supreme Court has not passed on the right of a state to treat federal corporations as foreign and apply the same rules as it does to corporations created by other states."

Wherefore, petitioner respectfully prays that a writ of certiorari be issued and directed to the Supreme Court of Florida at Tallahassee, Florida, commanding said court to certify and send up to this court, on a day certain, to be hereinafter stated, a record of all the proceedings in that case entitled: *State of Florida ex rel. Carroll Dunscombe, Petitioner,* v. *A. O. Kanner, as Judge of the Circuit Court for Martin County, Florida,* to the end that said case may be reviewed by this court as provided by Title 28, Sec. 344-b, and the judgments of the said Circuit Court and Supreme Court of Florida be reversed and the case remanded to said State Circuit Court, with instructions to dismiss the complaint of Regional, as by state law in such cases made and provided.

T. T. Oughterson,

Attorney for Petitioner.

State of Florida, County of Martin:

T. T. Oughterson, first being duly sworn, says that the foregoing petition is filed in good faith and not for the purpose of delay and that he believes that it is necessary to construe the act of Congress creating Regional Agricultural Credit Corporation, in order to determine the questions involved and raised by the foregoing petition.

T. T. Oughterson.

Sworn to and subscribed before me this.....day of January, 1948.

Ruth Ham,

(Seal) Notary Public.

BRIEF OF PETITIONER.

NATURE OF CONTROVERSY.

Regional Agricultural Credit Corporation of Washington, D. C., with main place of business in Kansas City, Missouri, and which will hereinafter be designated as Regional, instituted a suit at law in the Circuit Court for Martin County, Florida, on a conditional promissory note for advances it claimed to have made in Florida.

The Florida law, Section 613, 1941 Statutes, requires a foreign corporation that wants to do business in the state to first register with the Secretary of State, file a copy of its charter and pay the same fee as corporations organized under state law are required to do, for the privilege of doing business in such state and for the use of its courts in the enforcement of any claims that arise from such activity. This law 613.07 holds that unless such a corporation be organized under the law of Florida, it is held to be a foreign corporation.

Section 58.01, Florida Laws, 1941, requires a non resident corporation to post a cost bond as a condition it maintain a suit in [illegible]ate court, upon the demand of the defendant, and aft[illegible] days notice of such demand, if the bond has not b[illegible] posted, the trial judge has no discretion, but must dismiss the suit.

Regional in its declaration stated that it was a corporation of Washington, D. C., with main place of business in Kansas City, Missouri (record page 1), and defendant then filed his motion to dismiss said action on the ground that plaintiff was a foreign corporation and had not complied with Section 613, F. S. A., and in support attached

the statement of the Secretary of State to this effect. From the declaration it appeared that the plaintiff corporation had been doing business in the State and sought to use the courts of the state to enforce its alleged claims, although its charter (Title 12, Section 1148, ...), of which the trial judge was under the federal constitution, required to notice, did not authorize it to transact business in Florida, the Federal Land Bank for Columbia, South Carolina, having sole jurisdiction to do business of this nature in Florida or the Regional incorporated to operate within the area the Columbia bank was authorized to operate or do business in.

Defendant also filed his demand, the plaintiff posted the cost bond required under Section 58.01, F. S. A., served a copy of this demand on the attorney for the plaintiff and at the end of thirty days, no attempt having been made to comply with this condition, moved the trial court to dismiss the action.

Regional took the position that being organized by Congress, it was immune from State laws and not subject to state taxation and these statutes did not apply to it, but offered no proof or law that granted any such immunity and the defendant therefore asked the court to construe its charter and determine if in fact Congress had granted any such immunity or if it had attempted to, if Congress could make any such grant, require the taxpayers of the several states to furnish a free forum for such foreign corporations or make them immune from any reasonable requirements as to conditions precedent to maintain a suit in the state court that other foreign corporations chartered by foreign states had to comply with.

While Regional offered nothing to support this assumption of immunity and the trial court stated no law or facts in its order denying both these motions, it like Regional simply assumed it had such an exemption and ap-

parently the State Supreme Court did also, because in denying the writ it also stated no facts or law, and even failed to do so on the petition for rehearing when the need therefor was expressly pointed out.

However the decision must have been reached on that construction of such immunity, as all the state laws and the Supreme Court's construction of them has always held that a corporation not organized under the laws of Florida is a foreign corporation and that it has to comply with the law and register and pay the tax required as a condition it do business in and use the state courts to enforce claims arising therefrom and unless it has complied, and unless it posts the cost bond within the time required, a trial judge has no discretion but must upon demand of a defendant, dismiss the action.

Since the decision in *McCullough* v. *Maryland,* 4 Wheat. 316, and until Justice Holmes wrote his dissenting opinion in *Panhandle Oil* v. *Mississippi,* 277 U. S. 218, the courts had followed the dictum in the McCullough case and held that such federal corporations were immune for state taxation. However, as Justice Holmes pointed out, not only did the federal constitution not forbid such taxation, but expressly authorized it, that if the government could be destroyed by state taxation, the states could also be destroyed if they were required to afford a place where federal corporations or their employees could ride tax free. This decision was regarded as sound, as a great mass of federal corporations had in late years been chartered and they and their employees were accepting and demanding all the services of the various states, but paying nothing in return therefor.

The adoption of this view caused a reversal of all the earlier cases so that such earlier cases are no authority. *Flint* v. *Stone Tracy,* 220 U. S. 107, was the basis for the Florida Supreme Court reversing all the earlier cases in

Lakeland v. *Ames*, 143 So. 744, in which it cited *Flint* v. *Storey* and held that a municipality acting in a proprietary capacity had to pay the state excise tax for carrying on such a business.

As between the government and the states, the right to tax is now recognized as being reciprocal, if the state furnishes services to the government or its corporations it is entitled to be reimbursed for such expense and the fact the tax may have to be paid by the federal government by indirection, *Alabama* v. *King*, 301 U. S. 1, 140 A. L. R. 615, can make no difference, also *Standard Oil* v. *Lee*, 199 So. 325.

The further well known rule that immunity from taxation is never presumed and if such a claim is made, the claimant has to point to some valid act and prove that it is immune. *U. S. Shipping Board* v. *Sullivan*, 261 U. S. 146.

In *Christie* v. *Highlands*, 153 So. 794, the Florida Supreme Court pointed out that the purpose of Sec. 613, F. S. A., was to require the foreign corporation to pay the excise tax in order to avoid the penalties for its non payment.

The contention of the petitioner is that, in the eye of the Florida law, Regional is a foreign corporation and if it wants to do business in Florida, it must pay the same tax that any other foreign corporation is required to pay, but even if it is not required to pay such excise tax, it has not then qualified to bring a suit in the state court and be immune from posting the statutory cost bond required of such plaintiffs. Most of such compliance acts were based on the theory that if such a foreign corporation wanted to do business in a state and sue to enforce the claims that arose therefrom, it had to also appoint someone as an agent for the service of process upon, so the residents of the state could sue, without pursuing such cor-

porations to the place where their principal place of business is located. Regional takes the position like many other federal corporations that it is immune from suit, in a state in which it does business, *Federal Land Bank* v. *Priddy*, 295 U. S. 229; but those who have claims must sue it where its main place of business is located. There was nothing in its charter that granted any such right and as a matter of equality under the law it could have no such right.

ARGUMENT.

FIRST QUESTION.

Did the trial and appellate court err in holding that Regional was not a foreign corporation and not required to post the cost bond as a condition it maintain a suit in the Florida court?

In order to set the question at rest as to what constituted a foreign corporation, the legislature enacted Sec. 613.07 that provided that if the corporation was organized under the laws of any other state, territory or country, it was a foreign corporation.

The same worded statute was before the court in *Federal Land Bank* v. *Priddy,* 295 U. S. 229, and it was held, the federal corporation was foreign within the meaning of the state law.

In construing the act, the Florida court before the amendment was passed in *Ulmer* v. *First Natl Bank,* 55 So. 408, held that a national bank chartered by Congress was a foreign corporation under this act and it had to qualify before it could bring suits to enforce claims in the state court. Sec. 58.01, F. S. A., provides that a non resident plaintiff shall file a cost bond when suit is instituted and if it fails, and after thirty days notice, is in default, the defendant may move to dismiss the action.

Of course if the plaintiff has qualified to do business and has an agent for service of process appointed, it is not required to post such a bond, but many causes of action arise, where the non resident plaintiff has not been doing business in Florida and yet is permitted to use the state court to enforce its claims. The contention of the petitioner is that Regional was required to post this bond,

even if it did not have to qualify and pay the tax in order to do business, and that was a reasonable requirement that could be exacted from any non resident plaintiff.

23 Amer. Jur. 472, Sec. 485:

> "Since a state has power to require a foreign corporation, seeking relief in its courts to submit to reasonable rules as to giving security for costs, such a rule must be complied with."

The Florida court's construction of this act in *National Net & Twine* v. *Stevens*, 135 So. 509:

> "That if no attempt is made to comply with the act the action is properly dismissed."

14 Amer. Jur. 29, Sec. 44, Note 16:

> "If security for costs is not furnished by the plaintiff on notice from the defendant, the usual remedy; in the absence of any statutory remedy is to move for the dismissal of the action.
>
> The statutory remedy under Sec. 58.01 is to move the action be dismissed. No attempt was made to comply, the plaintiff taking the position it was not required to observe the state law as to securing costs."

SECOND QUESTION.

Did the trial and appellate court err in holding that Regional was not a foreign corporation and required to register, pay the excise tax and appoint an agent upon whom service of process could be made, if it wanted to do business in the state and use its courts to enforce claims that arose from such activities?

Petitioner's contention is that under the laws as now construed, it would make no difference whether a federal

corporation or some agent of the government was acting in either a governmental or proprietary capacity and whether or not the excise tax would eventually have to be paid by the government, if it seeks to avail itself of the state facilities, it has to carry its fair portion of the load that results from providing such services. It may use the roads the state provides, *Standard Oil Co.* v. *Lee,* 199 So. 325, it may or its employees use the municipal facilities, *Graves* v. *New York,* 306 U. S. 466, its agents may use material in the construction of a governmental facility. *Alabama* v. *King,* 314 U. S. 1; or it may own real property, *R. F. C.* v. *Barnett,* 118 F. 2d 190; *U. S.* v. *Brown,* 41 Fed. Supp. 838; but if it wants to come in a state it must pay the same taxes that others similarly engaged are required to pay.

The Arkansas act construed in *Federal Land Bank* v. *Priddy,* 295 U. S. 229, followed the Florida Act, Sec. 613.07, in the same words and held it was a foreign corporation under such act.

As stated in *Rosenberg* v. *U. S. Shipping,* 295 Fed. 376:

> "It is highly desirable that when governmental agencies or corporations, enter into private business they should be subjected to the same liabilities as private corporations similarly employed."

U. S. Shipping Board v. *Sullivan,* 261 U. S. 146:

> "And if they claim immunity from such liability, the burden is on them to show it exists."

Many banks or those interested in inducing farmers to plant more, make similar loans and at the same interest rates, and all this shows is an attempt by the government to move in and take over such private business. If the people want a socialistic or communist form of

government, they have the right to adopt it, but the great complaint today is the government is in private business and if it has such right, it can't expect to not only be furnished with unlimited capital at the taxpayers' expense and then have the further advantage of not having to pay the same excise taxes or be subjected to the state laws as are those with whom it competes.

Sec. 613, F. S. A., does not forbid filing an action by a foreign corporation, to enforce claims that arose from its unlawfully doing business, in the state, without first complying, it simply forbids it *maintaining* the action in the absence of compliance. The Florida court reviewed the purpose of the act in *Hogue* v. *D. L. Morrison Construction Co. of Virginia* in 156 So. 377, 95 A. L. R. 357, and in which it pointed out that the complete bar of the earlier act had been relaxed, but still the action can't proceed until it does comply.

In *Irwin* v. *Gilson*, 158 So. 77, it said:

> "A foreign corporation that has not qualified to do business in this state, *cannot maintain* an action in its courts, and it is reversible error *to deny a motion to dismiss and require the defendant to answer.*"

Hence the order dated September 14th, 1946, overruling the motion to dismiss and requiring the defendant to plead, because the plaintiff had not qualified nor had it posted the cost bond, was reversible error.

Bothwell v. *Buckbee*, 275 U. S. 274.

A state may lawfully require a foreign corporation that has done an intrastate business, to qualify under the statutory provisions for doing business before it sues in its courts, 23 Amer. Jur. 274.

Petitioner therefore claims that under the construction of the state law, the trial and appellate court could

have only reached its decision upon the basis, the plaintiff was immune from state taxes and immune from the laws of the state that applied to non resident plaintiffs.

THIRD QUESTION.

Did the trial and appellate court err in finding that Regional was immune from state taxation or laws and with no proof offer to sustain such a claim and nothing in its charter that granted any such immunity?

Exemption from taxation is never presumed and if claimed, the claimant has to point to some valid statute that grants. In the *Priddy case, supra,* the Federal Land Bank was held to be a foreign corporation, in the Ulmer case, the Florida court held the bank was a foreign corporation and had to comply before it could maintain a suit in the state court.

In *McAllister* v. *Drapeau,* 85 Pac. 2d 523, it was held HOLC was in the eye of the law a private corporation.

The Minnesota court dismissed the action of *Union Brokerage Co.,* 322 U. S. 1072, for noncompliance, regardless of the fact it claimed it had a license from the federal government to carry on its business. This court recognized that doing business in a state, imposed costs upon the state and such costs must be paid.

Clyde Mallory v. *Alabama,* 296 U. S. 261.

It costs money to maintain courts and pay jurors and which the filing fees in no way cover. There is no more reason why such corporations should expect to use without payment, the state courts, than the government should expect federal contractors to be furnished free use of the roads, or its employees to enjoy the use of the state facilities without contributing anything towards their cost. There can be no hair line distinction; if the use of such facilities puts a burden on the state or municipality, then the govern-

ment or its corporations, agents or employees have to bear their share.

Cohen v. *Virginia*, 6 Wheat. 264:

> "A corporation, created by federal law, for local purpose and with powers designed to be exercised *within specified territorial limits*, if it can lawfully exercise its powers outside of such limits, *must do so subject to the laws* of the state in which the acts are done."

Bank of Augusta v. *Earle*, 13 Pet. 516:

> "If a corporation is limited to a definite territorial area by its charter, any contracts entered into outside such area are void."

This court rejected the contention of the appellants in *Hopkins Federal Savings & Loan* v. *Cleary*, 56 S. Ct. 235, 100 A. L. R. 1405, that Congress could by a law authorize corporations chartered by a state, to evade state supervision and laws by adopting a federal charter. What it can't do by direct action it can't accomplish by indirection and Congress has never in any way suggested that the plaintiff was immune from state taxation or the laws of the state in which it does business. On the other hand, Florida held in the Ulmer case that a corporation chartered by Congress was a foreign corporation in Florida and it had to obey the laws of that state and qualify before it could maintain a suit in its courts.

There is no practical difference between Regional Farm Credit Districts and Regional Agricultural Credit Corporations, the first are organized under Title 12, Section 640, both stem from the same parent, one loans on real property and the other on chattel mortgage, both are confined to specified territorial limits, both are subject to the laws of the state within which they operate, but neither's charter authorizes them to bring a suit to recover

money. Both are subsidiaries of the R. F. C. which is a corporation organized for profit, wholly owned by the United States and claims through its operations it makes millions of dollars, acting in a proprietary capacity and in competition with private business.

Such federal corporations are not immune from taxation nor from control by the state in which they do business.

R. F. C. v. *Barnett,* 118 F. 2d 190, held the parent was liable for state taxation; *U. S.* v. *Brown,* 41 Fed. Supp. 838 (Florida), held the R. A. C. C. was liable for state taxes.

North Dakota Wheat Growers v. *U. S.,* 66 F. 2d 573, was a suit by the United States to recover money loaned by a Federal Land Bank, a subsidiary of the R. F. C. and under the real party at interest statute it was held the Farm Board could not have maintained a suit in its own name for money loaned the defendant, but here Regional is attempting to maintain a suit in its own name regardless of the fact nothing in its charter authorizes.

FOURTH QUESTION.

Did the trial and appellate court err in holding that Regional was authorized to do business in Florida or sue in the state court to enforce the claims that arose by reason of its unlawful acts?

Section 613.11 makes it a criminal offense for a foreign corporation to come into Florida and do business without having first qualified.

23 Amer. Jur. 145, Sec. 144, 69 A. L. R. 134.

The domicile of a federal corporation is the place where its *principal place of business is located.*

The declaration alleges that Regional's main place of business is Kansas City, Missouri. While neither court

made any express ruling on the question, that was before them, the only possible inference is, that in denying the motions to dismiss, the ruling was based on the presumption, that this plaintiff did not have to comply or furnish a bond, because it was a corporation chartered by Congress, as in all other cases it has been consistently held, that a foreign corporation must comply, but the rule is stated in 23 Amer. Jur. 243:

> "A state is not precluded from the exercise of normal powers over a foreign corporation, merely because it is chartered by Congress."

The fact cannot be overlooked that the main reason for such so-called incentive loans, was due to the many different government agencies and corporations whose activities and rules so circumscribed a farmer that he had no other source of credit open. Having created the situation, Regional, in behalf of the government came into Florida and did business. War Production Board told him what kind of a container he could use, ODT came along and told him how much he should load in a car and that he couldn't have ice although the shipment was perishable and then after he had planted, OPA came along and could tell him in advance, what his cost to produce and harvest his crop would be and set a price upon it, and under threats of fines and imprisonment he was forced to observe such price. The result was that the government took the crop at its own price or if it was sold to the public consumers, it was sold for less than the cost to produce it and in turn the farmer either had to subsidize the government or the consumer, all depending upon who obtained his product. His usual private source of credit having been so destroyed, Regional then moved in and usurped this business. It is difficult to see how if the private corporations that did this business had to pay such taxes,

why a federal corporation acting in a proprietary capacity would not have to pay the same tax. To rule otherwise would be to require the man who is to be beheaded to furnish the ax and the executioner.

To claim a state cannot make such reasonable rules under its police power or require a federal corporation, that wants to obtain the benefits of the services the state maintains, to pay the same excise tax private corporations in similar activities are required to pay, that are chartered by the various states, is in violation of the Tenth Amendment.

State v. *Panhandle Oil*, 112 So. 584:

> "The states have the power to tax the privilege of carrying on business and the fact that the government may be indirectly benefited does not make the tax unlawful." Citing *Metcalf* v. *Mitchell*, 269 U. S. 514.

Standard Oil v. *Lee*, 199 So. 325:

> "The test of the validity of a privilege or excise tax, is not whether it is laid directly on the United States or one of its governmental agencies, but whether or not in the way it is laid, it directly retards, impedes or burdens the United States in the exercise of its constitutional powers."

But the rule is still stronger when a federal corporation acting in a proprietary capacity claims immunity for such a tax. The constitution does not forbid a state from requiring a federal corporation to pay the same excise tax as corporations not so chartered are required to pay, as a privilege for doing business in such states or using its courts to enforce claims that arose in such states nor to submit to such reasonable rules as to insure payment of the costs in the actions they bring. Such charges are just as much a cost of their doing business as are the salaries

or rent they pay. Is the state also required to furnish them with rent free accommodations under the claim that to charge rent would put a burden on the government. The claims of their employees, landlords or contractors that to tax the property rented to the government, or the wages of the employees or the materials the contractor purchases is in effect an indirect tax on the government. If the employee was not required to pay the tax, he could work for less, if the landlord was exempt from taxes he could rent his property for less and therefore all such services should be rendered by the states gratis. Whether the service furnished by the state is the use of its roads, police protection or the use of its courts can make no difference, because the great mass of these federal corporations were crushing the states or the taxpayers that furnished such facilities.

Petitioner therefore contends that the trial court erred in denying his motion to dismiss and requiring him to answer before the plaintiff had complied and paid the privilege tax, and it also erred in refusing to dismiss the action, when the plaintiff refused to comply and furnish the cost bond and the appellate court erred in affirming such ruling and the case should be reversed and remanded and returned to the trial court with instructions to dismiss said action.

Respectfully submitted,

T. T. OUGHTERSON,
Attorney for Petitioner.